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8 BEFORE THE HEARING PANEL OF THE  
9 CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD  
10

11 In the Matter of:	)	BOARD STAFF'S BRIEF IN OPPOSITION
	)	TO APPEAL OF THE CALIFORNIA
12 County of Los Angeles Local Enforcement	)	INTEGRATED WASTE MANAGEMENT
13 Agency, City of Los Angeles Local	)	BOARD'S ACCEPTANCE AND
14 Enforcement Agency, and North Valley	)	PROCESSING OF BROWING FERRIS
Coalition	)	INDUSTRIES' APPLICATION FOR A
	)	SOLID WASTE FACILITIES PERMIT FOR
15 Petitioners	)	A COMBINED SUNSHINE CANYON
	)	LANDFILL, SYLMAR CALIFORNIA
16 vs.	)	
	)	
17 California Integrated Waste Management	)	PUBLIC RESOURCES CODE § 44307,
18 Board, acting as the Enforcement Agency,	)	44309 & 45030
19 Respondent		

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I

INTRODUCTION

The Joint Legal Brief ("City/Co. Br.")<sup>1</sup> submitted by the City of Los Angeles and the County of Los Angeles' Local Enforcement Agencies (collectively "City/County") paints a picture of the California Integrated Waste Management Board ("CIWMB") as an overreaching State agency attempting to usurp landfill enforcement authority away from local jurisdictions. Such a depiction flies in the face of the facts in this matter. To this day the City and County Local Enforcement Agencies ("City/Co. LEAs") continue to exercise enforcement authority over the Sunshine Canyon landfills within their jurisdictions, and will continue to do so long as these separate landfills continue to operate and the LEAs are acting in conformity with State law. With respect to the formation of a new single landfill straddling these jurisdictions and succeeding the two separate landfills (the "Combined Landfill"), again the City/County have the unquestioned authority to designate either of their existing LEAs as Enforcement Agency for the new facility (or any other presently existing LEA for that matter) and (upon CIWMB approval) the City/County would retain their jurisdictional authority. Finally, at any point in the sixteen months since the County issued its Conditional Use Permit ("CUP") for the Combined Landfill, the jurisdictions could have designated and sought CIWMB approval for a new entity to serve as LEA, thereby once again retaining their jurisdictional authority. It is the City/County's failure to timely pursue any of these myriad of alternatives that has led top the "enforcement void" which the CIWMB is obliged to fill.

Petitioners' arguments are predicated on a "muddying of the waters" over the extent that the City and County have provided approval for the Combined Landfill. This leads to confusion as to whether the City/County are contending that the operator, Browning Ferris Industries

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<sup>1</sup> The North Valley Coalition ("NVC") submitted its Brief in this matter on April 30, 2008, leaving little time for Board Staff to incorporate a separate response to each of NVC's arguments into this Brief. As many of NVC's arguments are joinders to arguments already made by the City/County, the analysis provided herein are intended to be responsive to both Briefs. To the extent NVC raises additional issues (i.e., the "public participation" and "CEQA" arguments), Board Staff does provide specific responses thereto herein.



1 (“Operator”) presently either: (a) has no local approvals sufficient for the **formation**<sup>2</sup> of the  
2 Combined Landfill; or (b) has sufficient local approvals for formation but has yet to obtain  
3 approvals for certain “**Merged Operations**” (a term used throughout the City/Co. Br.) at the  
4 Combined Landfill. This distinction is critical to understanding the City/County’s objections to  
5 Board Staff’s determination to act as Enforcement Agency (“Board EA”) for the Combined  
6 Landfill.

7 Consider, for example, one possibility: if the City/County are contending that the  
8 Operator presently has no local approvals sufficient for the **formation** of the Combined Landfill,  
9 then the Board EA’s determinations have no impact on the City/County, as the local  
10 governments can simply block the Combined Landfill’s **formation** through a court action against  
11 the Operator (in which the CIWMB would not be party nor take a position). Thus the parties  
12 agree, as the City/County emphasize in their Brief, that “... the CIWMB ... has no standing to  
13 challenge or contradict the City or the County’s determinations that BFI lacks final land-use  
14 approvals under the County CUP and the City Zoning Amendment.” As explained later in this  
15 Brief, under this scenario the Operator still has the right to obtain a Solid Waste Facilities Permit  
16 (“SWFP”) from the State for the Combined Landfill (as the CIWMB does not interpret and acts  
17 irrespective of local land use determinations). However, any SWFP issued under these  
18 circumstances would be for a landfill that does not exist, due to the Court blocking its formation.  
19 This kind of “exercise in futility” was a point of discussion between Board Staff and the  
20 Operator a few years ago when the Operator was contemplating applying to the CIWMB for a  
21 combined permit but had yet to obtain a CUP from the County for its formation, and on the basis  
22 of those discussions the Operator refrained from filing such an application at that time.

23 On the other hand, in light of the City/County raising its challenges against the Board EA  
24 administratively rather than against the Operator judicially, it appears that in actuality that the  
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27 <sup>2</sup> By “formation,” we mean the re-designation of the tracts of land which were previously designated by the  
City/County as “two adjacent .... Landfills” (Stipulated Statement of Facts (“Stip. Facts”), #1) as now constituting  
one landfill, which may undertake certain solid waste disposal activities, subject to obtaining the necessary  
governmental permits and approvals for such activities.

1 formation of the Combined Landfill by the City/County has already occurred. The provision of  
2 these approvals have apparently stymied the City/County in their ability to judicially block the  
3 formation of the Combined Landfill (though it may be that the Operator is precluded from  
4 commencing certain "Merged Operations" at the Combined Landfill until certain local  
5 conditions are met). The City/County are further stymied by their admission in these  
6 proceedings that they are not challenging the premise that "a Combined SWF Permit cannot be  
7 legally regulated or administered by two separate LEAs, either independently or through an  
8 agreement between the two LEAs." (City/Co. Br., p. 4.) In other words, for purposes of this  
9 appeal it is conceded that there can only be one LEA for the Combined Landfill, and since  
10 neither jurisdiction will consent to either the City LEA or the County LEA taking on the role  
11 separately, there presently is no LEA that can process the application for the Combined Landfill.  
12 This is precisely why the Operator submitted the application to the Board. Thus the CIWMB is  
13 filling an **"enforcement void" of the City/County's own making when they authorized the**  
14 **formation of the combined landfill sixteen months ago without designating an LEA for**  
15 **processing the SWFP application which quite expectedly followed such local approval.** In  
16 light of this conundrum (and their sixteen month delay in designating an LEA), the  
17 City/County's only resort is to entreat this Hearing Panel to block Board Staff's fulfillment of its  
18 obligations under the Integrated Waste Management Act to fill such a void in processing the  
19 subject application.

20 Based on the foregoing and the supporting analysis provided herein, Board Staff requests  
21 that the Hearing Panel uphold Staff's determinations as EA which are at issue in this appeal.  
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## 23 II

### 24 ARGUMENT

25 For purposes of this Brief, Board Staff will be acting on the presumption (addressed  
26 above) that the City/County **have issued** local land use approvals for the **formation** of the  
27 Combined Landfill (albeit potentially subject to conditions on certain "merged operations"). If



1 instead the City/County is confident that the Operator does **not** have the local approvals for such  
2 formation, then based on the above analysis they should embrace Board Staff's willingness to  
3 stipulate that a court decree blocking formation of the Combined Landfill vitiates any  
4 effectiveness of a State SWFP, and this appeal could be amicably resolved. Moreover, Board  
5 Staff's understanding is that the City/County are **not** disputing that if their proposed LEA for the  
6 Combined Landfill were presently designated and approved, such LEA would be **compelled** to  
7 presently process the Operator's application for the landfill under the same "strict timelines" that  
8 they are objecting to because the CIWMB is filling this role. The City/County cannot have it  
9 both ways: they cannot argue that there is no enforcement void on the one hand, while admitting  
10 that there is sufficient local authority for the Operator to compel a City/County LEA to process  
11 the application (for which they have not made the necessary designation) on the other hand,  
12 while insisting that the Board is not similarly compelled to act in this capacity in the absence of  
13 such designation.

14 **A. The Board Acts As The Enforcement Agency Of Last Resort**

15 Board Staff's concerns regarding the lack of an enforcement agency able to process a  
16 permit application from the Operator for the Combined Landfill date back to the Spring of last  
17 year. At that time the Operator advised that since it has now obtained a CUP from the County  
18 for a combined landfill, it was now in the process of preparing a solid waste facilities permit  
19 application for submission to the appropriate enforcement agency. This led to Board Staff's June  
20 26, 2007 letter to the City and County (Stip. Facts, #25), advising that "the board can assume  
21 responsibility for processing the permit for the combined facility." The letter further placed the  
22 City and County on notice that the "Board would take this action if a joint LEA agreement is not  
23 formed by the City and County, or the agreement has not completed the Board's certification  
24 process and the facility applies for a combined facility permit."

25 Since that time Board Staff has consistently maintained that the Waste Management Act  
26 calls for the Board to act as the enforcement agency of last resort where, among other cases, a  
27 governing body has failed to designate an LEA. Specifically, Public Resources Code Section

1 43202 imposes a mandatory duty upon the Board to assume such a role: "If an enforcement  
2 agency is not designated and certified, the board, in addition to its other powers and duties, shall  
3 be the enforcement agency within the jurisdiction...."

4 While the specific circumstances here are unusual in that the City and County each have  
5 LEAs designated and approved within their jurisdictions, the City/County have admitted in these  
6 proceedings that they are not challenging the premise that "a Combined SWF Permit cannot be  
7 legally regulated or administered by two separate LEAs, either independently or through an  
8 agreement between the two LEAs." (City/Co. Br., p. 4.) In other words, for purposes of this  
9 appeal it is conceded that there can only be one LEA for the Combined Landfill, and since  
10 neither jurisdiction will consent to either the City LEA or the County LEA taking on the role  
11 separately, there presently is no LEA that can process the application for the Combined Landfill.  
12 This is precisely why the Operator submitted the application to the Board.

13 Notwithstanding the fact that the required enforcement agency designation has yet to be  
14 made by the City and County for the combined landfill, Board Staff's determination that it is  
15 obliged to fill the "enforcement agency void" for permit application processing is challenged in  
16 this appeal. The City and County contend that since each have made designations for their  
17 respective jurisdictions, the statutory mandate has been fulfilled and thus the Board should not  
18 step in as the enforcement agency. (City/Co. Br., Sec. A, p. 7.) Moreover, when pressed last  
19 year by Board Staff on the issue, the City/County posited that the enforcement agency impasse  
20 created by the failure of the two governing bodies to designate an LEA for the combined landfill  
21 could theoretically extend into perpetuity, effectively precluding the landfill from ever  
22 combining unless and until the impasse is broken.

23 The above positions of the City and County are contrary to statutory intent. Clearly,  
24 governing bodies play the principal role in the formation of landfills within their jurisdictions  
25 through, among other means, their conditional use permit process. However, once an operator  
26 has gone through all of the hurdles of obtaining local jurisdictional consent for **formation** (albeit  
27 potentially subject to conditions on certain "merged operations"), State law assures that there is a



1 mechanism for putting an agency in place to enforce the permit, to assure that any potential void  
2 presented by the lack of a local designation does not arise. (While the Operator could have  
3 compelled the CIWMB to process the permit even without local authority for formation, as  
4 addressed in the Introduction issuance of a SWFP in such an instance would be an "exercise in  
5 futility.")

6 Here the issue at hand was not formally raised by the Operator until it had obtained the  
7 required consent for formation from both the City and subsequently the County in January, 2007.  
8 Indeed, given the many years the operator has pursued authority from the local jurisdictions to  
9 form the combined landfill, it is unfortunate that time was not concurrently utilized to form the  
10 new LEA for the new bi-jurisdictional landfill. Nevertheless, now that the Operator has obtained  
11 such local permission, Board Staff does not concur that it can be precluded from actually  
12 forming the merged landfill solely on the basis that the two jurisdictions have until late been  
13 having difficulty coming to terms on the LEA designation process. This "enforcement agency  
14 void" is precisely what the Board is obliged to fill unless and until a local designation is made  
15 and approved by the Board.

16 Finally, the statutory intent must be applied consistently regardless of whether one or  
17 both of the jurisdictions in cases such as this desire that the Board "fill the void." For example,  
18 here the City and County have advised that they believe they have finally come to terms on  
19 forming a new LEA entity for the landfill and that all they need is some additional time to submit  
20 the Designation Information Package to the Board and obtain CIWMB approval of the  
21 designation. Thus the Board stepping in last January upon submission of an application is not  
22 palatable to the City/County, as they now expect that the LEA void will soon be filled.  
23 However, if the circumstances were such where one of the two jurisdictions were recalcitrant in  
24 their negotiations to form the new LEA, the remaining jurisdiction would likely be actively  
25 calling upon the Board to fulfill its responsibilities and step in so that the merged landfill can  
26 commence operations. Indeed, in cases where the new capacity offered by the merged landfill is  
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critical to the capacity needs of the jurisdiction, the Board's failure to step in could have dire consequences.

**B. The City/County's Remaining Arguments Have No Merit**

The preceding section of this Brief addressed the City/County's fundamental argument in challenging Board Staff's determination to act as EA for processing the application for the Combined landfill – namely that “The CIWMB Need Not Act As Enforcement Agency for a Facility When LEAs Exist for the Jurisdiction.” (City/Co. Br., Sec. A, p. 7.) This section briefly addresses the remaining arguments of the City/County as stated in their Joint Legal Brief.

**1. Many of the City/County's Remaining Arguments Are Grounded On A Fundamental Misperception That Board Staff As EA is Attempting To Usurp the City LEA and County LEA With Respect to Their Authority Over Landfills Within Their Jurisdictions**

Many of the City/County's remaining arguments are grounded on a fundamental misconception of which functions Board Staff as EA is performing and which functions they are not performing. Board Staff as EA is performing the function of processing an application for the Combined Landfill, which straddles both jurisdictions and which the City/County does not dispute they lack authority over without a new LEA designation. Board Staff as EA is not performing the functions of acting in or otherwise supplanting the roles of the City and County LEAs with respect to their respective enforcement authority over the presently existing City Landfill and County Landfill, or any other landfills within their jurisdictions for that matter. Board Staff is simply filling a permitting and enforcement void created by the City/County when they provided local approvals for the formation of a Combined Landfill without designating an LEA for the Combined Landfill, and once such designation is made and approved by the CIWMB, Board Staff as EA would be replaced by the City/County's LEA of choice.

In light of the above, the City/County's contention that Board Staff is attempting to “take away the authority of the County LEA in regulating the County Landfill or to prevent the City



1 LEA in regulating the City Landfill” without due process (City/Co. Br., Sec. C, pp. 8-9) is  
2 incorrect. Indeed, throughout this dispute the City and County LEAs have been exercising their  
3 undisputed authority over these existing landfills without any CIWMB intervention, and will  
4 continue exercising their authority so long as these two landfills exist as separate facilities.  
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6 Similarly, the City/County’s argument that Board Staff as EA is “process[ing] an  
7 application for a permit affecting the City [and County] Landfill[s]” (City/Co. Br., Sec. D, p. 9)  
8 is also incorrect. It is the Operator’s prerogative to cease operations of its separate City and  
9 County Landfills and instead operate as a Combined Landfill (particularly since it has local  
10 authority for the formation of such a landfill from both the City and the County). Again, Board  
11 Staff is simply filling the void created by the City/County decision to provide local authority for  
12 such formation without having designated an LEA, which there is no dispute it needs to do.  
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14 Nor can the City/County persuasively assert that “no impasse exists” by their failure to  
15 date to designate and receive CIWMB approval for an LEA for the combined landfill (City/Co.  
16 Br., Sec. F, pp. 10-11). This impasse has existed since the County approved the CUP for  
17 formation of the Combined Landfill in January, 2007 (following the City’s earlier approval), and  
18 at any time during the sixteen months since CUP issuance could have rectified the impasse by  
19 designating an LEA and submitting it to the CIWMB for approval.  
20

21 Finally, the actions of Board Staff as EA do not “run against the policies of the Integrated  
22 Waste Management Act,” which call for the CIWMB to “work with local governments in  
23 implementing the [Act].” (City/Co. Br., Sec. G, pp. 11). Indeed, Board Staff has consistently  
24 been attempting to do just this since its June 26, 2007 letter to the City and County, in which it  
25 “offer[ed] its assistance to help facilitate the City and County efforts to form a joint LEA.” (Stip.  
26 Facts, #25.) The CIWMB reiterated its offer to assist the City LEA and the County LEA in the  
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1 process in an August 20, 2007 letter (and many times thereafter), and the CIWMB, BFI, and the  
2 County LEA met in September of 2007 to discuss the process and the requirements to establish  
3 the new SCL-LEA. (Stip. Facts, #22.)

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5 **2. The City/County's Contention That the CIWMB Cannot Act as EA Until It  
Obtains Agreements With their Respective Governing Bodies Is Incorrect**

6 The City/County argue that "[b]efore the CIWMB is able to legally assume the role as EA of the  
7 Sunshine Canyon Landfills, the CIWMB must first obtain from the Los Angeles County Board  
8 of Supervisors and the Los Angeles City Council agreements required of the CIWMB pursuant  
9 to PRC Section 43212.1 or 43310.1, which agreements have not yet been obtained." (City/Co.  
10 Br., Sec. B, p. 7.) This is incorrect. Such agreement need not be executed before the Board is  
11 obliged to assume LEA duties. Instead the statute explicitly calls for the Board to seek such an  
12 agreement "[i]f the Board **becomes** the enforcement agency" (indicating that the Board would  
13 have already become the EA), as required to fill the void, to assure that locally approved landfills  
14 are at all times properly regulated under the IWMA. Board Staff further notes that it has  
15 repeatedly attempted to enter into negotiations with the City/County for such an agreement,  
16 dating back to October 31, 2007.

17 **3. Decisions by LEAs on the Issuance of Solid Waste Facilities Permits Are  
18 Independent from Land Use Determinations by Local Land Use Authorities.**

19 City/County argue that CIWMB decided to act as EA for the Proposed Combined  
20 Landfill only after it determined that BFI had obtained land use entitlements from local land use  
21 authorities for the merger and joint operation of the then separate landfills. City/Co. Br., p. 10,  
22 ll. 13-16. City/County's argument, however, does not accurately reflect the facts that have led  
23 CIWMB to accept and process BFI's application for a solid waste facilities permit for the  
24 Proposed Combined Landfill. As we have pointed out (supra, pp. 2-4), City/County blurs the  
25 critical distinction between local entitlements necessary for the **formation** of the Proposed  
26 Combined Landfill from those necessary for its **operation**, then raises its distorted view as if it  
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1 were a dispositive legal issue. It is not. The legal issue here is that LEAs and CIWMB carry out  
2 their statutory duties respecting SWF Permit applications independently from decisions made by  
3 other governmental agencies, no matter how essential those other decisions are to the  
4 establishment or operation of a solid waste facility. What City/County raise, instead of a legal  
5 issue, is a critically important practical issue of primary interest to the operator seeking the solid  
6 waste facilities permit. The practical issue for the operator is whether it will be able to operate  
7 the facility, in light of local land use regulations. The legal issue is that any EA must respond to  
8 a permit application from a prospective solid waste facility operator without regard to the land  
9 use entitlements associated with the land where the facility is to be located. The IWMA does not  
10 limit local governments' land use authority. PRC § 40059(a). CWIMB has the obligation to  
11 serve as EA for any jurisdiction in which a solid waste facility is located or is proposed where no  
12 LEA has been designated by the local governing body having jurisdiction. PRC §§ 43202,  
13 43205(a).

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16 Over the years that staffs of City/County and CIWMB have been working on the general  
17 issue of the operator's desire to combine the two separate Sunshine Canyon Landfills, CIWMB  
18 has made clear its position that decisions that LEAs throughout the state and CIWMB make  
19 regarding solid waste facilities permits are made independently of local land use determinations.  
20 Most recently, CIWMB so stated in Mr. Rauh's January 17, 2008 letter to Mayor Villaraigosa  
21 and Mr. Fujioka. (Stip. Facts, #25.) State law expressly states that notwithstanding the  
22 Integrated Waste Management Act, cities and counties "may determine...(1) Aspects of solid  
23 waste handling which are of local concern, including...[the] nature, location, and extent of  
24 providing solid waste handling services." PRC § 40059(a); see also, PRC § 43021 – CIWMB  
25 shall develop "standards for the design, operation, maintenance and ultimate reuse of solid waste  
26 facilities, but shall not include aspects of solid waste handling or disposal which are solely of  
27 local concern."

Further underscoring that solid waste facilities permit actions are independent of local land use decisions, CIWMB in 2007 amended its regulations governing the manner in which operators apply for, and LEAs approve or deny, solid waste facilities permits. The amendment deleted a requirement that an applicant submit a copy of its land use entitlements to the LEA as part of its application. Title 27, California Code of Regulations (“CCR”), § 21570. Some LEAs used that requirement as a basis to claim they had the authority to determine whether and to what extent the local land use authorities allowed the solid waste facility for which the operator was applying.<sup>3</sup> The new regulations require that applicants file a copy of their applications with the local land use authority so that local agency, not the LEA, can determine whether the application presents any land use issues. 27 CCR §§ 21570(f)(9).

#### **4. NVC’s Additional Arguments Are Without Merit.**

NVC argues that, under PRC § 44307, a hearing must be held at the local level before it may proceed to the level of CIWMB. NVC Brief, p. 7, ll. 19-26; p. 9, ll. 21-26. In making this argument, NVC fails to recognize that CIWMB is acting in the role of EA for the purpose of processing BFI’s application for a SWF permit for the Proposed Combined Landfill. Section 44307 provides, in relevant part, that a person who alleges that the EA has failed to comply with law or regulation shall be provided a hearing. Typically, such a hearing would be held before the local Hearing Panel or local Hearing Officer. See, PRC § 44310. Here, however, CIWMB is

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<sup>3</sup> The FSOR states:

“This subsection [former section 21570(f)(9)] is deleted to remove the specific requirement that the operator include as part of a complete and correct application package a copy of land use entitlements for the facility. This is necessary to avoid promoting/creating any conflict between the local jurisdiction’s land use permit/entitlement and the solid waste facilities permit process. Under existing regulations, a complete permit application requires inclusion of the land use and/or conditional use permit (CUP) applicable to the facility. EAs are required to review the permit application to determine if it is correct. Other than using the information provided in the land use or CUP to better understand the project described in the application, it is not clear in existing regulation what the EA should be doing relative to reviewing the land use or CUP. Delays in the processing of some permit applications have resulted when EAs reject applications because they find them to be inconsistent with the land use entitlements. State law has not mandated that the EA be an agency required to verify if the information in the land use approval is correct or if the facility has the approval of the local government to operate as proposed under a solid waste facilities permit. The appropriate agency for making local land use determinations is the local government having jurisdiction, in most cases, the city or county in which the facility is located.” Addendum, p. 1, Final Statement of Reasons, December 2006 (“FSOR”).



1 acting as the EA regarding the application in question, not the City LEA or the County LEA,  
2 since neither has jurisdiction over the entire Landfill. CIWMB shall act as the EA when there is  
3 no local EA in place. PRC §§ 43202, 43205(a). When CIWMB is acting as the EA for a  
4 jurisdiction, hearings under Section 44307 must be heard by a three-member Hearing Panel  
5 appointed by the Board's Chair. PRC § 44309. Therefore, CIWMB is acting in accord with  
6 applicable statutes by providing Petitioners a hearing before CIWMB's Hearing Panel.

7 NVC also argues that CIWMB is proceeding in violation of the California Environmental  
8 Quality Act (PRC §§ 21000, et seq., ("CEQA")) because, NVC alleges, the SWF Permit  
9 application BFI has submitted fails to satisfy various CEQA requirements. NVC's argument is  
10 not ripe for adjudication. CWIMB, acting as EA, has not made any decision to approve or  
11 disapprove the application submitted by BFI. CEQA requirements must be satisfied before the  
12 public agency approves a project. Title 14, CCR, §§ 15074, 15090. CIWMB will comply with  
13 CEQA before it concurs in a SWF Permit for the Proposed Combined City/County Landfill.  
14 Since CIWMB has not approved a SWF Permit for the Landfill, it is premature for NVC to assert  
15 that CIWMB has violated CEQA.<sup>4</sup>

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27 <sup>4</sup> Note that CIWMB regulations require that an applicant for a SWF Permit submit, as part of its application, specified information describing the manner in which the application has achieved, or will achieve, compliance with CEQA. 27 CCR § 21570(f)(3). BFI submitted the required information to CIWMB as part of its application.


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III

CONCLUSION

Based on the foregoing, Board Staff requests that the Hearing Panel uphold Staff's determinations as EA which are at issue in this appeal.

Dated: May 7, 2008



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